IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KATHLEEN PHILLIPS, et al.,	:	CIVIL ACTION
Plaintiffs,	:	
	:	
v.	:	
	:	
COUNTY OF BUCKS, et al.,	:	
Defendants.	:	NO. 98-6415

MEMORANDUM AND ORDER

J. M. KELLY, J. **AUGUST 9, 1999**

Presently before the Court is the motion to dismiss of Defendants County of Bucks, Charles Martin, Sandra Miller, Michael Fitzpatrick, and J. Allen Nesbitt. Also before the Court is the motion for class certification of Plaintiffs Kathleen Phillips, Carol Marshall, Barbara Lamina, and Patricia Schaff. For the reasons that follow, Defendants' motion to dismiss is granted in part. Plaintiffs' motion is denied.

I. BACKGROUND

Plaintiffs are women who are or previously were housed at the Bucks County Correctional Facility ("BCCF"). They allege Defendants fail to segregate inmates needing mental health treatment in a separate unit, instead keeping these inmates in the general population. This practice, Plaintiffs claim, is different than in the men's facility, which has a separate mental health unit. Plaintiffs Phillips and Lamina, however, are the only Plaintiffs alleged to be in need of mental health treatment; Marshall and Schaaf are inmates who fear being injured by an inmate suffering from a mental health problem. Conversely, Marshall and Schaaf are the only Plaintiffs still incarcerated at BCCF; Phillips is on parole, and Lamina was released on bail three days after Plaintiffs filed their original complaint. Plaintiffs seek injunctive and

declaratory relief, as well as compensatory and punitive damages. They separately ask the Court to certify as a class all women now or in the future incarcerated at BCCF.

II. DISCUSSION

Defendants move to dismiss this action, arguing there is no case or controversy here as no Plaintiff has standing to maintain this suit.[1] Marshall and Schaaf, Defendants note, have never suffered an injury because they never have availed themselves of BCCF's allegedly unequal mental health treatment. As for Phillips and Lamina, Defendants argue they do not have standing because they no longer are incarcerated at BCCF.

A. The Rule 12(b)(1) Standard

Unlike the standards employed in Rule 12(b)(6) analysis, the guidelines for the Court's review of this Rule 12(b)(1) motion are far more demanding of the non-movant. The burden is on Plaintiffs to prove jurisdiction exists. Development Fin. Corp. v. Alpha Housing & Health Care, Inc., 54 F.3d 156, 158 (3d Cir. 1995). Further, the Court need not accept Plaintiffs' factual allegations as true and is free to consider facts not alleged in the complaint. Robinson v. Dalton, 107 F.3d 1018, 1021 (3d Cir. 1997). In fact, Plaintiffs cannot merely rely on the allegations they stated in the complaint; they must come forward with "affidavits or other competent evidence that jurisdiction is proper." Dayhoff, Inc. v. H.J. Heinz Co., 86 F.3d 1287, 1302 (3d Cir.), cert. denied, 519 U.S. 1028 (1996). As the Court describes below, Plaintiffs substantially have failed

[1]Defendants move to dismiss this action under Rule 12(b)(6), but because their standing argument relates to the Court's jurisdiction, it more appropriately should have been brought under Rule 12(b)(1). See American Fed'n of Gov't Employees, Local 2119 v. Cohen, 171 F.3d 460, 465 (7th Cir. 1999); see also 5A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1350, at 205 (2 ed. 1990) ("Because of the importance of the Rule 12(b)(1) defense, courts should treat an improperly identified motion that actually challenges the court's authority or competence as if it properly raised the jurisdictional point.").

to meet their burden.

B. Marshall and Schaaf

At "an irreducible minimum," Article III requires a party invoking a court's authority to show she personally has suffered some actual or threatened injury due to the putatively illegal conduct, the injury is fairly traceable to that conduct, and the claimed injury likely will be redressed by a favorable decision. Valley Forge College v. Americans United for Separation of Church & State, Inc., 454 U.S. 464, 472 (1982). The first of these case or controversy inquiries, actual or threatened injury, obviously does not visit a requirement that the party must already have suffered the injury, but this does not allow the alleged injury to be borne out of fantasy. If not actually suffered, the injury must be imminent, the suffering virtually certain. Hypothetical or conjectural injuries are inadequate. See Lewis v. Casey, 518 U.S. 343, 350 (1996); City of Los Angeles v. Lyons, 461 U.S. 95, 102 (1983). Further, a non-actualized injury must be particularized, affecting the plaintiff in a direct and personal way. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 & n.1 (1992). Bearing in mind that "[g]eneralizations about standing are largely worthless as such," Data Processing Serv. v. Camp, 397 U.S. 150, 151 (1970) (Douglas, J.), Supreme Court jurisprudence over the last fifteen years evidences one overriding concern: application of doctrines like standing ensures the judiciary will not intrude on the constitutional territories of the executive and the legislature. See, e.g., Lewis, 518 U.S. at 349-50 ("It is the role of courts to provide relief to claimants, in individual or class actions, who have suffered, or will imminently suffer, actual harm; it is not the role of courts, but that of political branches, to shape the institutions of government in such a fashion as to comply with the laws and the Constitution.");Allen v. Wright , 468 U.S. 737, 752 (1984) ("[T]he law of Art. III is

built on a single basic idea – the idea of separation of powers.").

Plaintiffs maintain the injury requirement is not so strict. They remind the Court that they are not required to suffer an injury before seeking relief. Further, drawing on a footnote in Hassine v. Jeffes, 846 F.2d 169 (3d Cir. 1988), they claim they have standing because they are entitled to receive mental health treatment and may take advantage of these services at some point in the future.

Neither argument persuades the Court that Marshall or Schaaf have standing. While "a remedy need not await a tragic event," Helling v. McKinney, 509 U.S. 25, 33 (1993), Plaintiffs nevertheless must satisfy the imminence aspect of the injury requirement. They have failed to do so. Nowhere in the Complaint or their response have Plaintiffs recalled one single threat made against them or an attack on another inmate. They may indeed harbor some fear that a mentally disturbed inmate might attack them one day, but this fear is too remote, too speculative for the Court to find they have standing. Hassine provides Plaintiffs no relief, either. The Supreme Court in Lewis specifically rejected the reasoning on which Plaintiffs rely:

> If – to take another example from prison life – a healthy inmate who had suffered no deprivation of needed medical treatment were able to claim violation of his right to medical care, simply on the ground that the prison medical facilities were inadequate, the essential distinction between judge and executive would have disappeared: it would have become the function of the courts to assure adequate medical care in prisons.

Lewis, 518 U.S. at 350 (citation omitted). Much like their speculative fear of injury, Plaintiffs' use of the mental health facilities is too uncertain for them to have standing.

Plaintiffs themselves undermine their assertion that they can meet the injury requirement. They allege they must witness physical altercations between the guards and the mentally ill inmates and "must endure the fear and pain of witnessing such incidents." (Compl. ¶ 21.) To the

extent Plaintiffs complain here about the conflicts between guards and inmates, these claims are not sufficiently particularized to confer standing.[2] Inmates like Marshall and Schaaf do not have standing to bring claims on behalf of other inmates. Weaver v. Wilcox, 650 F.2d 22, 27 (3d Cir. 1981). The injuries Plaintiffs suffered watching others' struggles accordingly do not confer standing.

The speculative nature of Plaintiffs' injuries also convinces the Court that this case fails to meet prudential standing concerns. Marshall and Schaaf seem to be asserting others' legal interests, not their own. See Conte Bros. Automotive, Inc. v. Quaker State Slick 50, Inc., 165 F.3d 221, 225-26 (3d Cir. 1998) (discussing prudential standing). These two Plaintiffs, then, are not the ones best suited to bring this suit. Both in view of this prudential concern and Plaintiffs' inability to meet the constitutional standing requirement of injury, the Court finds neither Marshall nor Schaaf have standing to maintain these claims. Defendants' motion to dismiss is granted as to these Plaintiffs.[3]

C. The 1983 Consent Decree

Plaintiffs also seek to avoid the standing issue by claiming the present case actually is governed by a Consent Decree Judge Clifford Scott Green of this district entered in 1983 in Inmates of Bucks County Prison v. Warren, Civil Action Number 79-1785. Plaintiffs vowed in their response to file an appropriate motion to enforce the decree, and, because Plaintiffs seemed

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[2]To the extent Plaintiffs intend for these allegations to refer to their own injuries, Plaintiffs have not alleged, nor could they prove, either intentional or negligent infliction of emotional distress.

[3]In view of this analysis, the Court will not address Defendants' fraudulent joinder argument.

inclined to pursue this issue, the Court asked the parties to brief it. Nothing further has happened, however. Plaintiffs have failed to present the issue to Judge Green and Defendants, who recognize they could invoke the Prison Litigation Reform Act's automatic termination provision, have failed to request termination of the decree. The Court will decline to embroil itself in this issue, particularly given the parties' apparent ambivalence.

D. Phillips and Lamina

The remaining Plaintiffs seek an injunction against Defendants, as well as compensatory and declaratory relief. Neither of these two Plaintiffs, though, is still incarcerated at BCCF, and so neither has standing to seek injunctive relief. When a plaintiff seeks an injunction, standing is afforded only when the plaintiff has suffered from the defendant's alleged conduct and that suffering continues. "Past exposure from illegal conduct does not in itself show a present case or controversy regarding injunctive relief, however, if unaccompanied by any continuing, present, adverse effects." O'Shea v. Littleton, 414 U.S. 488, 495-96 (1974). There are no continuing, present, adverse effects here for two reasons: one, neither Plaintiff is incarcerated now, and so neither is subject to the allegedly illegal conduct; and two, like in O'Shea and Lyons, the promise of future incarceration is no more than idle, even in view of repeated past interactions with law enforcement. See Lyons, 461 U.S. at 105-06 & n.7; O'Shea, 414 U.S. at 496. Whatever injuries Plaintiffs previously suffered are unconnected to present or future injury, and therefore Plaintiffs do not have standing to claim injunctive relief.

They do, however, have standing to seek redress for past injuries, but not from the County of Bucks or its officials in their official capacities. Counties, like states, are immune from judgment under the Eleventh Amendment, Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S.

89, 124 (1984), and so Plaintiffs' suit against the county is dismissed. County officials also are immune from suit when sued in their official capacities, id., and therefore Plaintiffs' claims against county commissioners Charles Martin, Sandra Miller, and Michael Fitzpatrick in their official capacities are dismissed. Finally, because J. Allen Nesbitt also is a county official as warden of the county prison, he too is immune from suit in his official capacity. See Hafer v. Melo, 502 U.S. 21, 25 (1991); Giandonato v. Montgomery County, No. 97-0419, 1998 WL 314694, at *5 n.2 (E.D. Pa. May 22, 1998). Plaintiffs' claims against Nesbitt in his official capacity are dismissed. Plaintiffs' theories of individual liability against Martin, Miller, Fitzpatrick, and Nesbitt survive this motion to dismiss.

E. Plaintiffs' Motion for Class Certification

Plaintiffs' motion for class certification is denied because they cannot meet even the first of Rule 23(a)'s requirements. A class may be certified only if:

> (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the parties.

Fed. R. Civ. P. 23(a). Here, the numerosity requirement is not met because joinder of both Plaintiffs' claims is wholly practicable. Plaintiffs' motion is denied.

An Order follows.

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ORDER

AND NOW, this 9th day of August, 1999, in consideration of the Motion to Dismiss of Defendants County of Bucks, Charles Martin, Sandra Miller, Michael Fitzpatrick, and J. Allen Nesbitt (Document No. 16), and Plaintiffs Kathleen Phillips, Carol Marshall, Barbara Lamina, and Patricia Schaff's response thereto; the Motion for Class Certification of Plaintiffs Kathleen Phillips, Carol Marshall, Barbara Lamina, and Patricia Schaff, and Defendants' response thereto; and the briefs the parties offered on the issue of the 1983 Consent Decree, it is hereby

ORDERED:

1. Defendants' motion to dismiss is **GRANTED** in part;

    a. Plaintiffs Carol Marshall's and Patricia Schaaf's claims against Defendants are **DISMISSED**;

    b. Plaintiffs Kathleen Phillips' and Barbara Lamina's requests for injunctive relief are **DISMISSED**;

    c. Plaintiffs Kathleen Phillips' and Barbara Lamina's claims against Defendant County of Bucks are **DISMISSED**;

    d. Plaintiffs Kathleen Phillips' and Barbara Lamina's claims against Defendants Charles Martin, Sandra Miller, Michael Fitzpatrick, and J. Allen Nesbitt in their

official capacities are **DISMISSED**;

2. Plaintiffs Kathleen Phillips' and Barbara Lamina's claims against Defendants Charles Martin, Sandra Miller, Michael Fitzpatrick, and J. Allen Nesbitt in their individual capacities survive; and

3. Plaintiffs' Motion for Class Certification is **DENIED**.

BY THE COURT:

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JAMES McGIRR KELLY, J.